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Attorney for Mr. Morales

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA
(HONORABLE JEFFREY T. MILLER)

UNITED STATES OF AMERICA,

Plaintiff,

v.

ELMER MORALES,

Defendant.

Case No. 08CR2525

Date: August 29, 2008

Time: 11:00 a.m.

**NOTICE OF MOTIONS AND
MOTIONS TO:**

(1) COMPEL DISCOVERY

TO: KAREN P. HEWITT, UNITED STATES ATTORNEY;
DOUGLAS KEEHN, ASSISTANT UNITED STATES ATTORNEY:

PLEASE TAKE NOTICE that on August 29, 2008, at 11:00 a.m., or as soon thereafter as counsel may be heard, the accused, Elmer Morales, by and through his attorney, Siri Shetty, will ask this Court to enter an order granting the motions outlined below.

MOTIONS

Defendant, Mr. Morales, by and through his attorney, Siri Shetty, pursuant to the United States Constitution, the Federal Rules of Criminal Procedure, and all other applicable statutes, case law and local rules, hereby moves this Court for an order to:

- (1) Compel discovery.

These motions are based upon the instant motions and notice of motions, the attached statement of facts and memorandum of points and authorities, and any and all other materials that may come to this Court's attention at or before the time of the hearing on these motions.

Respectfully submitted,

Dated: August 15, 2008

/s/ Siri Shetty
SIRI SHETTY
Attorney for Mr. Morales
Email: attyshetty@yahoo.com

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**STATEMENT OF FACTS AND POINTS AND
 AUTHORITIES IN SUPPORT OF MOTIONS**

I.

STATEMENT OF FACTS¹

On May 29, 2008, Mr. Morales was arrested near the border. Agents allege that he has no legal right to be in the United States, that he was previously removed to El Salvador on September 19, 2007, and that there are not records indicating that he subsequently reapplied to legally enter the United States.²

On July 30, 2008, Mr. Morales was indicted by a federal grand jury, which charged him with Deported Alien Found in the United States, in violation of 8 U.S.C. §§ 1326.

¹ The following statement of facts is based on the probable cause statement and limited discovery provided by the government. Mr. Morales in no way admits the truth of these facts nor their accuracy as cited in these motions. Further, he reserves the right to take a position contrary to the following statement of facts at the motions hearing and at trial.

² Subsequent to his arrest, Mr. Morales filed an N-600 application for derivative citizenship, based upon the naturalization of his mother. The application is currently pending.

1 These motions follow.

2
3
4 **II.**
5 **MOTION TO COMPEL DISCOVERY**

6 This request for discovery is not limited to those items that the prosecutor knows of, but rather
7 includes all discovery listed below that is in the custody, control, care, or knowledge of any "closely
8 related investigative [or other] agencies" under United States v. Bryan, 868 F.2d 1032 (9th Cir. 1989):

9 (1) Mr. Morales's Statements. The government must disclose: (a) copies of any written or
10 recorded statements made by Mr. Morales; (b) copies of any written record containing the substance of
11 any statements made by Mr. Morales; and (c) the substance of any statements made by Mr. Morales
12 that the government intends to use, for any purpose, at trial. See Fed. R. Crim. P. 16(a)(1)(A)-(B).
13 This request specifically includes a copy of any **audio and video-taped statements** of Mr. Morales and
14 any rough notes agents took of his statements.

15 (2) Mr. Morales's Prior Record. Mr. Morales requests disclosure of his prior record. This
16 includes Mr. Fudge's record of contacts with the United States Border Patrol and/or the Immigration
17 and Naturalization Service, even if those contacts did not result in prosecution. See Fed. R. Crim. P.
18 16(a)(1)(D).

19 (3) Arrest Reports, Notes and Dispatch Tapes. Mr. Morales also specifically requests the
20 government to turn over all arrest reports, notes, dispatch or any other tapes that relate to he
21 circumstances surrounding his arrest or any questioning. This request includes, but it is not limited to,
22 any rough notes, photographs, records, reports, transcripts or other discoverable material. Fed. R.
23 Crim. P. 16 (a)(1)(A)-(B), (E); Brady v. Maryland, 373 U.S. 83 (1983). The government must produce
24 arrest reports, investigator's notes, memos from arresting officers, dispatch tapes, sworn statements,
25 and prosecution reports pertaining to the defendant. Fed. R. Crim. P. 16 (a)(1)(A)-(B), (E); Fed. R.
26 Crim. P. 26.2.

27 (4) Documents and Tangible Objects. Mr. Morales requests the opportunity to inspect, copy,
28 and photograph all documents and tangible objects which are material to the defense or intended for use

1 in the government's case-in-chief or were obtained from or belong to him. See Fed. R. Crim. P.
2 16(a)(1)(E).

3 (5) Reports of Scientific Tests or Examinations. Mr. Morales requests the reports of all tests
4 and examinations which are material to the preparation of the defense or are intended for use by the
5 government at trial. See Fed. R. Crim. P. 16(a)(1)(F).

6 (6) Expert Witnesses. Mr. Morales requests the name and qualifications of any person that the
7 government intends to call as an expert witness. See Fed. R. Crim. P. 16(a)(1)(G). In addition, Mr.
8 Morales requests written summaries describing the bases and reasons for the expert's opinions. See id.
9 We request that the Court order the government to notify the defense as such in a timely manner, so that
10 a proper 104 (Kumho-Daubert) admissibility hearing can be conducted without unduly delaying the
11 trial.

12 (7) Brady Material. Mr. Morales requests all documents, statements, agents' reports, and
13 tangible evidence favorable to the defendant on the issue of guilt or punishment. See Brady v.
14 Maryland, 373 U.S. 83 (1963).

15 In addition, impeachment evidence falls within the definition of evidence favorable to the
16 accused, and therefore Mr. Morales requests disclosure of any impeachment evidence concerning any
17 of the government's potential witnesses, including prior convictions and other evidence of criminal
18 conduct. See United States v. Bagley, 473 U.S. 667 (1985); United States v. Agurs, 427 U.S. 97
19 (1976); United States v. Henthorn, 931 F.2d 29 (9th Cir. 1991). This request includes, but is not
20 limited to, any complaints filed (by a member of the public, by another agent, or any other person)
21 against the agent, whether or not the investigating authority has taken any action, as well as any matter
22 for which a disciplinary review was undertaken, whether or not any disciplinary action was ultimately
23 recommended. In addition, Mr. Morales requests any evidence tending to show that a prospective
24 government witness: (a) is biased or prejudiced against the defendant; (b) has a motive to falsify or
25 distort his or her testimony; (c) is unable to perceive, remember, communicate, or tell the truth; or (d)
26 has used narcotics or other controlled substances, or has been an alcoholic.

27 (8) Request for Preservation of Evidence. Mr. Morales specifically requests the preservation of
28 all physical or documentary evidence that may be destroyed, lost, or otherwise put out of the

1 possession, custody, or care of the government and that relate to the arrest or the events leading to the
2 arrest in this case.

3 (9) Any Proposed 404(b) Evidence. "[U]pon request of the accused, the prosecution . . . shall
4 provide reasonable notice in advance of trial . . . of the general nature" of any evidence the government
5 proposes to introduce under Rule 404(b). Fed. R. Evid. 404(b). Mr. Morales requests such notice three
6 weeks before trial in order to allow for adequate trial preparation.

7 (10) Jencks Act Material. Mr. Morales requests production in advance of trial of all material
8 discoverable pursuant to the Jencks Act, 18 U.S.C. § 3500. Advance production will avoid needless
9 delays at pretrial hearings and at trial. This request includes any "rough" notes taken by the agents in
10 this case; these notes must be produced pursuant to 18 U.S.C. § 3500(e)(1). This request also includes
11 production of transcripts of the testimony of any witness before the grand jury. See 18 U.S.C. §
12 3500(e)(3).

13 (11) Defendant's "A" File. Mr. Morales requests an opportunity to view his Immigration and
14 Naturalization service "A" file;

15 (12) The Record of any Deportation Hearing. Mr. Morales requests all records, tapes and
16 transcripts, including and not limited to the tapes from all alleged deportation proceedings, and from
17 any administrative hearings relating to any alleged orders of deportation pertaining to him;

18 (13) Residual Request. Mr. Morales intends by this discovery motion to invoke his rights to
19 discovery to the fullest extent possible under the Federal Rules of Criminal Procedure and the
20 Constitution and laws of the United States.

IV.

CONCLUSION

For these and all the foregoing reasons, the defendant, Mr. Morales respectfully requests that this Court grant his motions.

Respectfully submitted,

/s/ Siri Shetty

Dated: August 15, 2008

SIRI SHETTY
Attorney for Mr. Morales
Email: attyshetty@yahoo.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No. 08CR2525-JM
)	
Plaintiff,)	
)	
v.)	CERTIFICATE OF SERVICE
)	
ELMER MORALES,)	
)	
Defendant.)	

IT IS HEREBY CERTIFIED THAT:

I, Siri Shetty, am a citizen of the United States and am at least eighteen years of age. My business address is 110 West C Street, Suite 1810, San Diego, California 92101.

I have caused service of **NOTICE OF MOTIONS AND MOTIONS TO COMPEL DISCOVERY**. The following recipients are currently on the list to receive e-mail notices for this case and have thus been served electronically at the following email addresses:

Douglas Keehn: Douglas_Keehn@usdoj.gov, efile.dkt.gc1@usdoj.gov

I declare that the foregoing is true and correct.

Executed on: August 15, 2008

s/Siri Shetty

Attorney for Defendant

Email: attyshetty@yahoo.com